

May 2012

maine townsman

The Magazine of the Maine Municipal Association



TINY BUT DANGEROUS
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Pose Risks To Workers

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The Magazine of the Maine Municipal Association

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About a dozen Maine communities have taken initiative and mapped vernal pools on as much public and private land as they could. Some say this step can head off problems when development proposals come along.

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COVER: Lee Sampson and Matt Philbrick of the Kennebunk Public Services Department install tree wells for trees being planted along Parsons Beach Road. The photo was taken by Michael Claus.



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A Message From MMA



by Eric Conrad, Editor

MMA's New Middle School Essay Contest

“Citizenship is what makes a republic; monarchies can get along without it.”

In a nutshell, that famous quote from American author Mark Twain sheds light on the importance of a well-informed citizenry and the thinking behind Maine Municipal Association's five-year-old Citizen Education Program. We know, as you do, that municipal government is the most accessible, accountable and efficient level of governance in Maine. That is a powerful fact, as it means the more that citizens learn about municipal government, the more they will come to respect and support it.

A few of MMA's recent Citizen Education efforts include: a printed, 12-page “Citizen's Guide to Town Meeting,” mailed in February to all members who have that form of government; a narrated DVD on how local taxes are assessed, collected and what services they pay for; and, a poster sent to municipal clerks in 2011 listing annual deadlines for various licenses and registrations.

Starting on Page 19 of this edition of the *Maine Townsman*, you will see the latest step forward in our Citizen Education program – this time involving middle school students from across the state. Last fall, MMA reached out to middle school Social Studies Departments in Maine and asked teachers to submit student essays about local government. Each essay was to carry the theme, “*If I Led My Community...*” Thus, student writers could put themselves in imagined positions of leadership and explain what they would do to make their towns and cities better places to live, work and play.

We are pleased to report that more than 100 students from Aroostook County to Cumberland County entered our contest in its first year. The competition was tough but four winners were selected – from Fort Fairfield, Richmond, South Portland and Sullivan. Essays were judged on the basis of clarity of writing, quality of writing and demon-

strating an understanding of what municipal government does.


One student wrote about the concept of supporting local businesses. Another wrote about his town's struggle with crime. One wrote about the importance of sanding local roads each winter and how hard Public Services Department employees work. Several of the winning essays shared a theme that local leadership isn't about government-imposed rules so much as it is about people helping people, and leaders listening to constituents.

The judging was done by three brave souls: John Sylvester, Selectman in the Town of Alfred and Past President of MMA; Kate Dufour, Senior Legislative Advocate in our State & Federal Relations Department; and, Doug Eugley, an Accountant who works in MMA's Finance Department and serves as a selectman in his town, Sidney.

Each student's home municipality was sent a certificate of achievement, a monetary prize to be given to the student and applied to his or her ongoing education. This way, MMA organized and sponsored the contest and our members could give out the awards and share in the honors.

We know the awards were well-received. One student's work was recognized publicly at his community's Town Meeting in March. Several Maine newspapers published articles about the winners. And, in perhaps the most telling tribute to one of our winners, his grandmother called MMA and asked us to mail her five copies of this month's *Townsman* for the family to keep!

Please take time to read the winning essays and join us in congratulating all the students who thought about local leadership and entered the contest. Better yet, encourage your local middle school to take part in the essay contest when we do it again next school year.

(To learn more about MMA's Citizen Education Program, please visit our website at: www.memun.org and click on the “Citizen Education” listing to the left.) 

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Summer 2012 Could Be Worst for Lyme Disease

By Jeff Clark

When Kennebunk Town Manager Barry Tibbetts talks about the dangers of Lyme disease and the deer ticks that carry it, he knows whereof he speaks. “I got Lyme disease back in 2006,” he said. “One of our police officers has had it. Our operations manager got it from working in the yard.”

With the media and medical professionals warning that this season has the makings for a banner year for deer ticks, Tibbetts and other municipal officials are looking at taking all the precautions they can to protect their Public Works crews and other employees from exposure to the disease. They are distributing information sheets about how to avoid exposure and are asking employees to be extra careful about inspecting themselves for tick bites and other signs of infection.

Tibbetts was not initially diagnosed with Lyme disease when he began to exhibit its symptoms, including flu-like complaints and persistent fatigue. “I didn’t get the bull’s eye rash, just a red dot the size of my thumb,” he recalled. Although medical testing was not absolutely definitive, the indications were firm enough that his doctor treated him for Lyme anyway and cleared up the infection.

Kennebunk is in the heart of Maine’s thickest infestation of deer ticks, which carry the disease, according to the Maine Center for Disease Control and Prevention (Maine CDC). However, every county in the state reported Lyme disease cases last year. The center reported 991 confirmed cases in 2011, up from only 225 in 2004. At the same time, if national statistics are any indication, up to a quarter of Lyme disease cases go un-

reported or misdiagnosed. Nationally there were some 30,000 cases in 2009, the last year for which statistics were available.

“The general trend (in reported cases) in Maine has definitely been upward,” said Dr. Sheila Pinette, director of the Maine CDC. “I can’t predict if it will continue to climb or begin to plateau.”

Maine has yet to see any fatalities directly attributed to Lyme disease, but it is especially dangerous for anyone with a damaged or suppressed immune system, such as organ transplant recipients. Pinette says there is no vaccine to protect humans against the disease, although one is available for dogs. The only treatment is a lengthy course of antibiotics, administered orally if caught early and often intravenously for more developed cases. And, Pinette added, having Lyme disease once does not confer immunity

against further exposures.

Tibbetts and other town officials say they have not seen any effect on municipal health insurance coverage due to the potential for Lyme disease exposure.

TINY DEER TICKS

Of the 14 varieties of ticks found in Maine, deer ticks are among the most common, along with dog and woodchuck ticks. Luckily, Lyme disease is limited to the deer tick, which grows to be a little larger than the period at the end of this sentence.

Native Lyme disease cases were virtually unknown in Maine before the mid-1980s. At first confined to the islands and peninsulas, where warmer, wetter winter weather allowed deer ticks to survive the frigid temperatures that had kept them out of Maine, they gradually moved into coastal York and Cumberland counties as winter tem-

WHAT ARE THE SYMPTOMS?

The Maine Center for Disease Control emphasizes that early detection and treatment are vital to minimize Lyme disease effects. Early symptoms usually occur within the first month after a tick bite. If left untreated, later symptoms can surface months or even years after first exposure.

Some early signs are:

- A ring-like rash around the bite, the classic “bull’s eye” with a clear center and sometimes a red dot in the middle.
- Flu-like symptoms, such as fatigue, headache, fever and chills, muscle or joint soreness.

Later signs of untreated Lyme disease include:

- Arthritis in one or more large joints, usually the knees.
- Neurological problems, such as numbness, pain, facial paralysis and meningitis.
- Memory and concentration problems.
- Heart problems.

Jeff Clark is a freelance writer from Bath, jeffreyclark@gmail.com.

peratures continued to moderate.

The pattern of warmer winters over the past 10 years means that ticks and Lyme disease will continue to spread and thrive in Maine, according to Dr. Pinette. Although the worst infestations are still in southern and coastal Maine, the "tick line" of heavier infestations has moved steadily north into the Bangor area. The northward movement has also been seen in Vermont and New Hampshire, she said.

The tick stories started late last year, when deer processors reported finding huge numbers of ticks on deer harvested during the hunting season. Then veterinarians in southern and coastal Maine noted that they were seeing active ticks as early as February, as the mild winter reduced the usual winter kill. Then a spate of unusually warm weather in March, including two days with highs in the 80-degree range, sparked a surge of reports.

"The operations manager for the Public Works Department said his dog stayed out all night one night in March and when he came in the next morning he had over 100 ticks on him," Tibbetts said. "My brother-in-

HELP ON THE WEB

For more information about Lyme Disease, consider these Internet resources:

Maine Cooperative Extension information sheet:

<http://umaine.edu/ipm/ipddl/publications/5047e/>

Fact sheet specific to schools and student protection against ticks:

<http://www.maine.gov/agriculture/pesticides/schoolipm/pdf/tick-fact-sheet.pdf>

Maine Center for Disease Control and Prevention:

<http://www.maine.gov/dhhs/mecdc/infectious-disease/>

Maine Center for Disease Control webpage on ticks; includes resources for physicians, educators, and Maine residents and visitors:

<http://www.maine.gov/dhhs/mecdc/infectious-disease/epi/vector-borne/lyme/index.shtml>

Map of tick infestations in Maine:

<http://www.maine.gov/dhhs/mecdc/infectious-disease/epi/vector-borne/lyme/documents/deer-tick-map.pdf>

Information on mosquito and tick repellants from the federal Centers for Disease Control and Prevention:

<http://www.cdc.gov/ncidod/dvbid/westnile/RepellentUpdates.htm>

http://www.cdc.gov/lyme/prev/on_people.html

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law and his wife both found ticks on themselves after doing yard work one day in early April.”

Tibbetts says he is for the first time looking at organic pesticide treatments for Kennebunk’s sports fields and other areas where ticks would be common to protect town residents and mowing crews. He notes that one of the best preventive measures is wearing white clothing, which makes the insects easier to spot.

“Trouble is, the public works guys don’t wear white clothing,” he said. “We’re telling them that they have to check themselves daily and watch each other as they work.”

USING REPELLANTS

Insect repellants containing at least 20 percent DEET are recommended for anyone who is working or recreating outdoors, Tibbetts noted. He is also intrigued by the clothing impregnated with an insect repellant that is sold by various outdoors outfitters, including L.L. Bean.

“It’s certainly an option I think we should look at,” he said. Both tactics



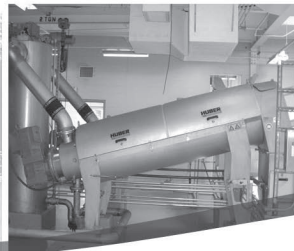
A backhoe is used on the Parsons Beach Road project. (Contributed photo)

PREVENTION TIPS

- Wear white or light-colored clothing so ticks can be seen more easily.
- Wear long-sleeved shirts and pants; tuck pants into socks and shirts into pants.
- Use an insect repellant containing at least 20 percent DEET and apply permethrin, an organic-based repellant, to clothing. (There have been reports that children should not combine both treated clothing and DEET repellants.)
- Check clothing and skin after being outdoors and remove ticks immediately using tweezers or special tick removal devices. If bitten, wash with soap and water and treat with an antiseptic. Mark the date on a calendar and monitor yourself for symptoms of exposure.
- Build tick barriers into landscaping, such as borders of rock between lawns and wooded areas.

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have the added benefit of repelling mosquitoes, which can carry the West Nile virus.


Other towns contacted for this article are a bit less intense about the problem, although officials are aware and in some cases giving their workers more of a heads up.

“There was just a discussion at my front desk this morning about the outbreak of ticks here this spring,” said Linda Strickland, a Harpswell town office worker.

“People are very much aware of them. We warn all the volunteers who work on the flower gardens here at the town office and over at Mitchell Field.”

“I’ve heard the stories in the news, but no one up here is really talking about it yet,” said Dave Tarbox, road commissioner for the Town of Newry. “I’ll probably say something to the road crew about it, though.”

Dr. Pinette said outside workers such as road crew employees are at the highest risk of Lyme disease exposure, followed by children.

“Those folks mowing grass and cutting brush along the roadsides really have to be careful,” she said. “Lyme disease is not something to ignore.” 



Todd Toussaint of Kennebunk Public Services prepares a tree for planting. (Contributed photo)

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Staying Ahead of Game Best with Vernal Pools

By Douglas Rooks

Though it's been one of the drier springs in memory, you can find vernal pools if you know where to look for them. The pools in the photographs accompanying this article are on the Tanglewood 4-H Camp property in Lincolnville, and a Maine Public Broadcasting television crew is on hand to document the occasion.

The budding citizen scientists, who are learning how to identify the "significant" vernal pools regulated under state law, in this case include a number of municipal officials – planning board and conservation commission members, even a code enforcement officer. They are trying to determine if a vernal pools project is right for their towns.

"It was fascinating," Jim Dunham, chair of the Lincolnville Conservation Commission, said of the day in the woods with researchers from the University of Maine. "There's a whole world out there that I knew almost nothing about" – and, as an environmental educator, Dunham considers himself well-informed on the subject.

Vernal pools are seasonally wet areas that fill up with spring rains and often dry up by the end of summer. They're connected to permanent water bodies, such as lakes and streams, and – until relatively recently – weren't often considered under most wetland regulations, federal, state or local.

That has changed. Federal law protects some vernal pools – and those regulations come into play when a project requires an Army Corps of Engineers permit. Since 2007, state law also has applied. The previous year, the Legislature capped 10 years

of study by adding vernal pools to protected environmental features under the Natural Resources Protection Act. The system the legislation set up appears to be unique.

Under both state and federal law, landowners are responsible for showing that proposed development projects do not compromise protected wetlands. But for vernal pools, that not always easy to do.

The Department of Inland Fisheries and Wildlife is responsible for identifying which pools are significant, but it has no resources to map pools. Surveys are instead done by local volunteers, with the cooperation of town government. So far, 11 towns have completed surveys of their vernal pools; others are considering their options.

ORONO TAKES LEAD

Orono is one that's completed mapping. To its planning director, Evan Richert – who was also state planning director in the King administration – doing so was a no-brainer. The town has had two major subdivisions – one proposed in 2004, the other in 2007 – that were stymied or substantially cut back by the discovery of vernal pools. Both were near downtown, in designated growth areas where the town encourages building.

"If there's bad news, it's a lot better to hear it up front rather than spend lots of time and money only to find out at the last minute," Richert said. In both subdivision proposals, the vernal pools weren't discovered until after the developers had surveyed the properties, laid out lots and submitted final plans.

The best way of avoiding such situations is "to create transparency," in

Richert's words: Find out where the vernal pools are, and submit them to the state Department of Inland Fisheries & Wildlife to see if they must be protected.

Assisting communities in that quest is the vernal pools project at the University of Maine, led by Professor Aram Calhoun and Research Associate Dawn Morgan. The two were the instructors for the Lincolnville pool hunt, one of many such events they've offered around the state.

Towns and cities seeking to know more about their options can request the Maine Municipal Guide to Mapping and Conserving Vernal Pool Resources – the third edition is just out. A 48-minute DVD, good for introductory gatherings, covers much of the same ground.

Calhoun said attracting volunteers into the field – town officials, school students and retirees – is relatively easy.

"People love to get out into the woods in the spring. There's usually a lot of enthusiasm about finding and studying the pools," she said.

PRODUCTIVE SPOTS

Vernal pools are ecologically significant because some of the state's most abundant amphibians use them for breeding. The pools, in turn, are magnets for many of Maine's more famous creatures – bears, raccoons, turtles, herons, ducks and eagles – who feed on the amphibians and their egg masses.

Pound for pound, vernal pools are some of the most productive wildlife areas around.

Pool identification focuses on three "indicator species" that are reliable signs of fertility – the wood frog,

Douglas Rooks is a freelance writer from West Gardiner and regular contributor to the Townsman, drooks@tds.net

spotted salamander and blue-spotted salamanders. Counting their egg masses is the major task for field volunteers. But the biggest reward comes when a pool features the delicate fairy shrimp.

Lloyd Irland, a forestry consultant and member of the Wayne Conservation Commission, can recall a tour of forestry officials doing a “green certification” study for a major landowner. “They were kneeling on the ground, fascinated, looking at the fairy shrimp – they had never seen this before, and they were supposed to be the experts.”

State law creates a 250-foot “study area” around pools found to be significant. The 250-foot zone is not a setback, and timber harvesting and development can take place in it under some circumstances. That provision was apparently acceptable to most lawmakers, who made only modest changes to the program after it was targeted for review as part of the LePage administration’s “streamlining” of environmental rules last year.

Finding the pools in the first place usually requires aerial photography using infrared cameras. Readfield and Wayne decided to collaborate in studying vernal pools and they hired James W. Sewall Co. to do the flights.

“We were able to get some grants, and contributed a small amount ourselves,” said Jerry Bley, a member of the Readfield Conservation Commission.

EARLY SPRING

Pools are best identified in the early spring, before foliage comes out, but even then some are missed, and all require on-the-ground identification to confirm. Participation by landowners, under the law, is voluntary. Bley said interest in Readfield and Wayne was decent. “More than half the landowners, representing more than half the pools, did give permission,” he said.

The joint project attracted 36 volunteers, who have visited pools over the last three years. “We’re just doing the last ones this spring,” Bley said.

Overall, the project budget was \$30,000, which suggests that joint projects might be easier to accomplish. Jim Dunham thinks that could happen in the Midcoast area, which has had more development pressure in recent years.

Among the participants in the April vernal pool workshop were officials from Hope and Camden, including Camden’s town planner (and

code enforcement officer) Steve Wilson. Wilson said local interest has increased as a result of the proposed trail project that would connect Camden to its neighbors along the coast.

Finding out where the vernal pools are, and evaluating their significance, could be crucial to that project.

“We see it as part of public access and public education,” Wilson said. One idea is to include boardwalks along the trail. Although significant vernal pools are not supposed to be filled or altered, they can be bridged, which allows people to get close-up views.

In Orono, it was the town, rather than private developers, who got the initial benefit of the new vernal pool maps, Evan Richert said. Both a new public works garage and an expansion of the demolition debris area were planned for sites with significant vernal pools.

“We were able to work around them,” he said.

In all, aerial photography identified 114 possible vernal pools on 81 parcels in Orono. After 32 landowners gave permission, volunteers studied 62 pools, of which 36 – or 54 percent – turned out to meet the biological criteria for significant pools, Richert said.

LINCOLNVILLE MITIGATION

Even in Lincolnville, which is just starting to look at mapping, vernal pools have come up already in connection with development. The volunteer fire department built a long-awaited new station in 2010, but the site included a significant pool – something discovered only after construction was under way. The town ended up providing mitigation by protecting pools in other areas of town.

Such stories are likely to multiply once the pace of development picks up again.

“There’s a real advantage to being out in front,” Richert said. Orono now hopes to avoid a repeat of the earlier disappointments where developments the town welcomed were instead abandoned or scaled back.

Although no local regulation is required, Richert said eventually towns may want to explore whether a constricted site with a vernal pool could be developed in exchange for protecting larger numbers of pools elsewhere. That could be similar to the develop-



Jeannie Hutchins and Cindy Dunham examine a wood frog egg mass. (Contributed photo)

ment rights trading system that a few towns, including Scarborough, employ for other purposes.

For towns starting out, it's wise to have a budget and realize that mapping may take several years to complete.


"It was really a lot more work that we expected, not just doing the surveys but completing the analysis," Jerry Bley said.

Aram Calhoun, the UMaine project director, said the science behind vernal pools is still evolving. One of the unsolved mysteries is how amphibians born there migrate away from the pools.

"If we knew that, we might be able to reduce protection on three sides and increase it on the fourth," she said. "We aren't able to map those movements yet."

For Bley, one of the unexpected benefits of the Readfield-Wayne vernal pools project was the camaraderie it established for volunteers.

"We had people who don't ordinarily have much contact who discovered a common interest. It turned out to be a great way to get townspeople working together," he said.

(For more information, go to: www.umaine.edu/vernalpools/) 



UMaine researcher Dawn Morgan corrals some wood frog eggs. (Contributed photo)

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2012

Upcoming Elected Officials Training

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Maine Municipal Association

Elected Officials Workshops

Wednesday, May 16, 2012

Town Hall – Sabattus, ME

Wednesday, June 13, 2012

American Legion Post #29 – Dover-Foxcroft, ME

Thursday, June 28, 2012

Atlantic Oceanside – Bar Harbor, ME

Thursday, July 19, 2012

Ramada Inn – Saco, ME

Wednesday, July 25, 2012

Maine Municipal Association – Augusta, ME

Thursday, August 30, 2012

Sugarloaf – Carrabassett Valley, ME

Tuesday, October 23, 2012

Maine Municipal Association – Augusta, ME

Tuesday, November 27, 2012

Center for Community Health Education – Houlton, ME

Who Should Attend: This workshop is a “must” for newly elected and veteran officials-councilors & selectpersons-as well as a wonderful opportunity to learn key points of your new position while networking with officials from around the state.

Elected Officials Workshop II

Wednesday, December 5, 2012

Maine Municipal Association – Augusta, ME

Who Should Attend: This workshop is primarily designed for councilors and select boards in larger communities with city and town managers. While newly elected officials will benefit greatly from the program, veteran councilors and select board members will find value in it, too. Town and city managers are encouraged to participate along with their councilors and select boards. This course meets state FOAA training requirements (Right to Know).

Roles of Elected Officials & Municipal Managers

Thursday, June 21, 2012

Kennebunk Town Hall – Kennebunk, ME

Who Should Attend: Councilors, selectmen, managers and administrators: this workshop will focus on the differing roles and responsibilities of elected officials (selectpersons/councilors) and appointed officials (managers and administrators), including key responsibilities, legal requirements, personnel issues, communication and goal setting. It will help elected and appointed officials run an effective hiring process and understand their respective roles, their differing needs and how to work smoothly together. It will provide insight and understanding as well as specific ideas and tools to bring back to your municipality.

When Inmates Come Home: *How to Aid Assimilation into the Community*

**Special
Event**

Tuesday, May 22, 2012

Maine Municipal Association – Augusta, ME

Who Should Attend: This workshop is structured for elected officials and other policymakers looking to implement or build on a local jail reentry initiative. It is intended for a diverse audience of municipal officials and employees and can be applied to both smaller and larger municipalities. It would also be beneficial to county officials.

Register Online: <http://www.memun.org/public/MMA/svc/training.htm>



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Maine Municipal Association

If I led my community...

Maine Municipal Association 7th Grade Essay Contest **Winners**

Seth Woodman

Fort Fairfield Middle/High School

“If I led my community ...”

Do you like the community you live in? Sometimes I feel like there are a lot of things that I could do to improve my community. That is why, if I led my community, I would change many things.

The first thing that I would do after I got elected is get the people’s opinion on what they would like to see happen with the town. I would also propose the idea of building a new building in town where small businesses could rent out their own shops. This idea would help raise the amount of money our community would have to spend on such things as: improving roads, to reduce the number of crashes in this area; building new parks to make the scenery nicer; and funding more programs through the Parks and Recreation Department. I would also propose a law that would raise the fine for littering, in hopes that all the great scenery in Maine wouldn’t get ruined.

I would try to make my community feel more like their home to all of the people living in it and I would also give my townspeople the decisions on how things would be. I would try to keep things small and family-owned and operated, so that our community wouldn’t be focused on making money and earning recognition, so much as just knowing your neighbor’s name. I would make sure that everyone in my community was cared for, that they had essentials such as food, water, clothes and hygiene products, and I would make sure that there was always someone that they could rely on. I would try to make my community also a nicer place by reducing crime and putting more of the town’s funding into the police system in hopes that there would eventually be little or no crime in my community.

Overall, I would just make my community a safer, nicer place to live, in hopes that people would be attracted here and that the people that are already living here love it.

ABOUT THE CONTEST

More than 100 essays were submitted by teachers from around the state as part of Maine Municipal Association’s first middle school essay contest, a new part of our Citizen Education program. Essays were judged based on clarity of writing, quality of writing and showing an understanding of municipal government.

MMA wants to recognize and thank the contest judges: John Sylvester, Selectman, Town of Alfred, and Immediate Past President of MMA; Kate Dufour, Senior Legislative Advocate, MMA State & Federal Relations Department; and, Doug Eugley, Accountant, MMA Finance Department.

LOCAL GOVERNMENT
begins with **YOU**

If I led my community...



Maine Municipal Association 7th Grade Essay Contest **Winners**

By Emma Bunker

Mountain View School, Sullivan

If I led my community, I would do many things to make it better than it already is.

One of the first things I would do is try and have a group of people that would, every week, go out and clean the sides of the roads. I want to do this because I constantly see litter cluttering up the sides of the roads and it really takes away from the beauty of the land.

Also, to help with that, I would make a law to keep people from littering. I would do this by applying for a grant. Another thing I would do is take care of the slippery roads during the winter months. I would have the roads more sanded by the plow drivers who work hard enough already. This may take longer so I would increase the amount that is paid to the drivers.

Some of the other things I would do is try to make the amount of car crashes that happen go down by putting up rails and having cops patrol the roads and make sure everyone is wearing a seat belt, not texting or talking on the phone and not intoxicated.

I also want the people to feel more safe in their community. So the police would patrol the roads and look out for anything suspicious. Which means more time the cops are away from their families. So, I would have them rotate every three hours.

Also I would want the people to feel free to suggest something that they want in their community. For example, maybe they want more parks for their kids to play at or maybe they would like more restaurants. I know that there is probably a certain limit on how much money I can spend on these things. So that may mean that they can't have anything they want but we could try.

Another thing I would do is build big storage containers to keep the water from becoming polluted. I would have farmers do both substance farming and commercial farming. That way they can benefit the community and still care for their family. I would also bring the price down on gas and fuel. So that way people can go into town more.

One other thing I would do would be making time to meet with other electives to get some advice on what I should do. I would even see if they wanted to work together so my community could be a better place. Also we could have fundraisers.

Also I would have people volunteer at nursing homes and other places like that, including orphanages and places that care for sick kids. I would want to this because these places constantly need someone to help out.

Those are some of the many things I would do if I led my community. I thank you.

LOCAL GOVERNMENT
begins with **YOU**

If I led my community...



Maine Municipal Association 7th Grade Essay Contest **Winners**

Luke Foster

Holy Cross Middle School, South Portland

If I led my community? I would do community service. I would do Christmas carols around the neighborhood. I would set up fundraisers.

The first thing I would like to do is community service. I can give some time at the soup kitchen. I could ref sports games for the little kids. I can volunteer time working at the Special Olympics. Community service is giving your own time to help the needs of others.

The second thing I could do to help my community is start some Christmas carols. I could sing carols at the local church. I could sing carols house to house. I could sing carols at the nursing home. I personally think Christmas carols get people in the mood for the season.

The last thing I could do for my community is set up some fundraisers around town. I could do fundraisers to help the poor and needy. I could do a blood drive so that all the blood goes to people who are sick and in the hospital. Another fundraiser I could do is a school fundraiser for all the schools that are in debt or closing or just need money for supplies and other things. I think fundraising could do a lot to someone whether they're poor or their school isn't doing well or even if they're really sick, you can draw blood.

I can lead my community by helping others. Community service can help bring the town together as one. Caroling show how much you care about the holidays and making other people happy. And fundraisers help those who are less fortunate, or who are in a less fortunate environment to get back on their feet and be the best they can be.

I think the whole idea of leading a community is not for the fame or the fortune, but to help make it right. It's not about what you the leader wants, but what everyone can agree on. And if the whole community got together and worked as one then we can make the world a better place, one step at a time. I think on behalf of everyone I would like to say this world we live in isn't perfect, but if we can gut it out and work together like we should, we could change that. So let's come together as one, all of us. It doesn't matter what race, tall or small, loud or shy. We can make the world a better place. Sure it's only the community, but I think we could do much more. Step by step, push by push, together we are one. So whoever you are, wherever you are, come join me in making this community a better place for everyone. Just remember the community is just one piece of the puzzle. There's a whole other world out there.

Now I would like to thank you for reading this and hope you get inspiration out of it.

LOCAL GOVERNMENT
begins with **YOU**

If I led
my
community...

Maine Municipal Association
7th Grade Essay Contest **Winners**

Brendan Emmons

Richmond Middle School

Leading your community is not an easy job. You have to decide where the people's tax money will be spent and keep everyone happy. Keeping everyone happy is hard to do because everybody has different ideas on where the tax money should be spent. Families with kids want money to be spent on recreation programs and education. Older citizens who are retired and live on Social Security want to lower the tax rates by removing extra programs that they do not feel are necessary.

If I were the leader of my community I would try to encourage more people to come to the town meetings to voice their opinions and to work together to come up with ideas for new programs and lowering taxes.

I would focus on crime fighting. I would put out a survey to find out why people think crimes are happening in Richmond and what we can do to eliminate it. I would advise people to get together and start a neighborhood watch on their street. I think it would also be helpful to set up a community self-defense class for kids, adults and senior citizens so people will be able to protect themselves if they were attacked.

Playing sports is one of my favorite things to do. When kids outgrow their sports gear they sometimes throw it away or give it to places like Goodwill where it's re-sold in other communities. If I led the community I would set up a drop box in the town office where kids could drop off their used sports gear, like baseball gloves and basketball shoes, to give to kids that can't afford to buy new ones. This will help the Bobcats to keep doing well in sports.

If I led the community I would organize a community day where citizens would do things to honor our veterans who have served our country and to help our elderly and people with special needs. We could clean up a yard or mow a lawn for someone who can't do it themselves, make lunch for someone who is homebound or build a ramp for someone in a wheelchair. My uncle is in a wheelchair and a group of local Boy Scouts built a ramp for him in his community.

I'm glad I'm not the leader in our community because it's a big responsibility. Everyone in our community should take part in local government by voting and attending town meetings. If we all work together we can make Richmond a better place to live.

LOCAL GOVERNMENT
begins with **YOU**

Municipal Fallout From Rising School Budgets

By Lee Burnett

School funding shortfalls are aggravating municipal budget-setting pains this spring, just as the economy is starting to show signs of recovery.

Augusta is weighing a 3.5 percent increase in its tax rate, even after deciding to eliminate a police patrol position, six school positions and close Bicentennial Nature Park. Brunswick is considering an increase in its tax rate of up to 10 percent. Scarborough is considering a 9.3 percent increase. They are not alone in facing tax increases.

These scenarios are coming on the heels of years of a prolonged recession. Belts have been tightened repeatedly in the past three years to deal with sagging tax bases and weak streams of non-property tax sources of revenue, including severe cuts to the state municipal revenue-sharing program.

Municipal and school officials say there's not much spending left to tighten.

"We are in the land of no good choices," said Bill Bridgeo, city manager in Augusta.

"This is the year of reckoning," said Tom Hall, town manager in Scarborough.

There are some common denominators in this year's budget struggles. A big factor has been the end of three years of funding under the federal American Recovery and Reinvestment Act, better known as stimulus funding. A significant portion of this funding had flowed to school districts to limit teacher layoffs.

Some officials say communities that relied too much on federal stimulus funding were making a mistake.

"Schools have known for some time that they would face this so-called cliff,"

said Jim Rier, deputy director of the Department of Education. Maine received \$131 million in stimulus funding the past three years, he said. Maine had also received \$35 million in Education Jobs funds. That funding source has also expired.

Another factor has been a sharp drop in reimbursements for the Medicaid program, which offsets some of the cost of providing special education services mandated by law. Funding has dropped 80 percent since 2009-2010 to about \$7.7 million, according to Rier. It pays for physical therapy, speech therapy and occupational therapy for students with special needs.

"There's a big variation in how it's playing out," said Rier. "It's very hard to characterize."

OUT OF STEP

The reimbursement has dropped because Maine was out of step with the feds, according to Dean Crocker, the state ombudsman for children's services and president of the Maine Children's Alliance. "It's very complex," Crocker said.

First, Maine was forced to abandon a decades-old, decentralized billing system, which had left it up to each school district to interpret Medicaid reimbursement rules.

Second, Maine was told to end its "bundled billing" system that also had been practiced for years. Under that system, the state MaineCare office sent monthly sums to reimburse districts for a variety of services that a student would receive. Both decentralized billing and bundled billing were not up to the feds' accountability standards and a federal audit is pending, Crocker said.

Lastly, the feds told Maine to switch to an "off-the-shelf" billing system for

Medicaid payments, requiring a reapplication process for all providers – doctors, hospitals, nursing homes and schools. Many school districts didn't realize they had to reapply until reimbursement was refused and many were frustrated with the new system.

"The (transition) process was awful," said Crocker. "You'd call one day and get one answer, call the next day and get another answer. There was no consistency. No one knew what to expect. Superintendents couldn't budget and that put them in a difficult place."

Superintendents "got burned so badly they are really gun shy" about

SCHOOL SPENDING IN THE NEWS

Taken together, changes to state education subsidies and K-12 school spending that has been held back for several years have led to debate over spending levels. Among the communities that have been the subject of recent media reports concerning school spending or operations:

Augusta

Bath

Brunswick

Bucksport

Ellsworth

Pittsfield

St. George

Scarborough

Wilton

Winthrop

(Sources: Various media reports)

Lee Burnett is a freelance writer from Sanford, leeburnett_maine@hotmail.com

the new system, he said. "They are very concerned about the accountability requirement."

The ebbing tide of federal money in most cases obliterates a modest \$19 million increase in state support of General Purpose Aid to Education. That money – which totals \$915 million this year – is apportioned according to a formula weighted toward school population size and relative weakness of the local tax base.

Predicting each year's GPA allotment is difficult because the variables change every year. Districts that got the biggest increases – a \$2.9 million increase for RSU 9 in Farmington and \$1.6 million increase for Falmouth – recently completed school construction projects and are getting help with debt payments.

This year's budget struggles continue the dispiriting news of the past



Bill Bridgeo, Augusta City Manager

several years, said Rob Walker, president of the Maine Education Association. "It's more of the same. For the past three or four years we've seen stagnant salaries and benefits, giving up raises to get contracts, minimal raises," he said.

Parents in a few towns – notably Brunswick – are "getting revved up" to persuade voters to "step up and backfill the shortfall." They are isolated cases, how-

ever.

"Hopefully, people are recognizing the shortsightedness of underfunding education, but most places are still trying to flat-fund budgets and go for no tax increase. When that happens, programs and staff go," he said. Contracts continue to get negotiated, but rarely for more than a year at a time. "Both sides are a little nervous about planting their feet for two or three years," he said.

AUGUSTA'S NUMBERS

The school funding losses for Augusta include \$1.9 million in state education funding, \$1.3 million in federal stimulus funding, \$556,000 in Medicaid and \$500,000 in Education Jobs. "Here's the deal," said Bridgeo, the city manager, "between 2010 and 2013, we've had an adverse impact of \$4.3 million."

The school system is proposing to spend \$106,000 less than last year, but that would still require an additional \$400,000 from local taxpayers, or a 2 percent increase in the tax rate, said Bridgeo. Bridgeo's municipal budget would add another 1.5 percent increase in the tax rate, primarily due to a continued flat tax base and increased costs for General Assistance, employee salary increases and a utility district increase related to sewer overflow and hydrant rental.

"It's been difficult, it's challenging, but we haven't yet come to the point of cutting all sports," said Bridgeo. "We've closed all the buildings we can. We've gone from two to one to no junior high."

Bridgeo said disagreements over policies have been respectful. "The

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dynamic in place is that councilors are fully supportive, but the other side of coin is that councilors have been talked to by seniors, especially on fixed incomes, and they can't take any more tax increases."

Scarborough is facing a \$1.14 million drop in federal school funding. But after three years of belt tightening that included the elimination of 42 positions throughout the school system, Scarborough is looking to restore some programs, said Town Manager Tom Hall.

This year's school budget includes salary increases, computer upgrades, buying two school buses, a "quality assurance" system for curriculum and restoration of foreign language in grades three to five.

"We can continue on a downward path or we can start to put back and rebuild some of the programs," he said. "After the sort of belt tightening we've done, you reach a critical juncture."

Hall said the projected 90-cent increase in the tax rate to \$13.93 per \$1,000 of valuation is half as much as the original budget proposal called for. Debt refinancing on a school construction project and other measures

helped bring the budget down. Still, overall education spending is up 7.2 percent.

"This couldn't be happening at a worse time," said Hall. "I see this as a year of correction."

Hall sees positive things ahead, including a projected \$15 million increase in valuation.

"We're seeing very good signs about the local economy from what is on the Planning Board agenda,"

he said. He's also encouraged that local voters last year approved a \$39 million school construction project that will be funded entirely with local tax dollars. He termed the vote, which passed by a margin of 63 percent for and 37 percent against, "astounding."

AIR BASE CLOSURE

Brunswick School Superintendent Paul Perzanowski describes a "perfect storm" that has developed on the



Tom Hall, Scarborough Town Manager

heels of the closing of Brunswick Naval Air Station. The base closing has reduced the student population in that school system by more than 800 students – to 2,500 – over the past four years.

In turn, the enrollment drop resulted in a corresponding slide in state education aid tied to enrollments and to a loss of aid tied to military children whose parents pay no property taxes because they live on

federal property. More than 90 school positions have been lost in the past two years. Last year, two schools were closed.

Complicating this year's budget has been a loss of nearly \$700,000 in stimulus funding, a loss of \$1.2 million in General Purpose Aid to Education, a rise in real estate values and school consolidation, which eliminated \$1 million in tuition payments that the Brunswick schools used to received

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from Durham. The loss of \$1.2 million in GPA was particularly painful because the district had been told last fall that it could expect a \$243,000 increase in funding for the next school year.

This year, the push back is coming not from anti-taxers, but from a parents' group called Brunswick Community United that is pushing to restore school funding.

"The parents have been much more active for us," said Perzanoski. "It's gotten to the point (that) they're concerned the cuts have gone too far, as we all are."

Two developments may improve budgeting next year. The first is that the state has made available to local school districts the formulas for projecting GPA, according to Perzanoski. Until now, the Department of Education's annual announcement of estimated GPA funding levels has been an anxiously awaited event.

Future GPA predictions – based on a three-year average – will not be precise, but having the formula is something that superintendents have sought for years, he said. "We're going to (be able to) predict it, somewhat," he said.

In addition, Maine may be getting serious about establishing reliable

protocol for schools to access Medicaid funding. A bill sponsored by Rep. Peter Edgecomb, R-Caribou, directs the Department of Education and Department of Health and Human Services to work with an interagency stakeholder group to refine MaineCare policies.

Gov. LePage vetoed the bill, saying he is concerned about the effort's potential cost and that it a study could distract the Department of Health & Human Services from continuing to find solutions to the state's larger MaineCare problems. The Legislature

overrode LePage's veto, however, so the directive stands.

Crocker, head of the Maine Children's Alliance, termed Rep. Edgecomb's effort "major progress." He's also encouraged that Maine's Office of MaineCare Services has pledged to treat medical services delivered in a school setting differently.

"This marks a change in attitude and also recognizes flexibility in Medicaid regulations," Crocker said. "I'm anticipating reimbursements will rebound." [mt](#)

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Use Care Disciplining Municipal Employees

By Curtis Webber, Esq.

Disciplining public employees can be a perplexing subject for municipal managers since the discipline proposed may require an analysis of protections available under state law, local ordinances, municipal charters, union contracts and even the U.S. Constitution.

Although limitations of time and space do not permit an in-depth explanation of these subjects in this article, hopefully it will serve at least to alert municipal officials who are contemplating discipline of a public employee regarding some of the potential pitfalls which exist in this area.

Because Maine is an employment-at-will state, people sometimes forget that some protections are available for workers in the public sector that private-sector employees do not possess. Title 30-A M.R.S.A. § 2601 states that, except as otherwise provided by law, charter, or ordinance, the municipal officers shall appoint “all municipal officials and employees required by general law, charter or ordinance¹ and may remove those officials and employees for cause, after notice and hearing.” (Emphasis added)

Certain categories of public employees also have separate protections from being fired except for cause. See, e.g., 30-A 2601-A (Code Enforcement

Officers), 30-A M.R.S.A. § 2671(1) (Police). There is no obvious explanation for affording extra protection to these categories of municipal employees except perhaps that, by the nature of their positions, they are more frequently put in positions which are antagonistic to the interests of private citizens. Or, perhaps, their protected status is due to more effective lobbying at the state level by their employee organizations.

Protection against being discharged except “for cause” means that the reason for termination must be substantial. Except in the most egregious cases, a municipality should follow some kind of progressive discipline procedure before terminating an employee so that it is obvious that the employee in question failed to meet the employer’s expectations of which he was aware. If the discipline results in a hearing, the municipality’s case will be aided if there are warnings in the file which the employee clearly received.

In cases in which the employee is charged with serious misconduct, the employer may be reluctant to allow him or her to remain in the workplace while the allegations are being investigated. In such a case, administrative leave may be appropriate so that the employee in question is, in effect, suspended with pay until the employer is ready to make a final decision and, if necessary, conduct a hearing based on evidence collected while the employee was out of the workplace. If the employee’s pay is discontinued while the investigation is ongoing, the employee can argue that he or she was fired without notice and hearing.

If staff is available, it is desirable for the employer to conduct an investigation of the charges through a Human

Resources Director or a supervisor at a higher level than the one who has recommended termination. In cases in which a discharge is likely to result in litigation, the expense of hiring someone from outside the workplace to do the investigation may be warranted. The investigator should make notes regarding statements from witnesses and others who have knowledge of the circumstances so a record can be preserved for a hearing or a trial which may not take place any time soon. Although potential witnesses may request that their statements remain confidential, the investigator should be hesitant to give such assurances since the statements in question may have to be presented if a public hearing later becomes necessary.

ADEQUATE NOTICE

Before a hearing can be held, an employee who has been threatened with discharge should be given notice of the charges against him or her. This means, at a minimum, being advised of the reasons that discharge is being proposed as well as some indication of the evidence which would justify termination.

One measure of whether the notice is adequate is whether it is sufficient to enable the employee to prepare his or her defense at the hearing. If evidence is presented at the hearing that the employee had no reason to anticipate, the employee would be justified in requesting that the hearing be cancelled or, at the very least, suspended until another day to allow time to muster a defense to the new evidence.

The hearing contemplated by the statute need not be a formal trial. However, it should include the presentation of evidence through live witnesses who can be questioned by

Curtis Webber is a partner at the law firm Linnell, Choate & Webber in Auburn. An Auburn native, Mr. Webber served for many years as its City Solicitor. He also represents other municipalities in the area. Mr. Webber attended Bowdoin College and graduated from Harvard Law School. He has frequently appeared before the Maine Supreme Court and has argued appeals in the First Circuit Court of Appeals in Boston and the U.S. Supreme Court. Mr. Webber can be reached at cwebber@lcwlaw.com or by calling: (207) 784-4563.

the employee or their attorney and an opportunity for the employee to present evidence which would disprove or undermine the municipality's case.

A critical question in determining the fairness of the hearing will be the impartiality of the decision-maker. This can be difficult if it is the Town Manager who is recommending termination.² However, a Town Manager can usually delegate the responsibility for making the termination decision to the municipal officers and instead act as the prosecutor. See, e.g., *Quintal v. City of Hallowell*, 2008 ME 155, 956 A.2d 88.

A more difficult question is presented when it is the Selectmen or Town Council who are recommending termination. Indeed, they may be the ones who will offer evidence at the hearing regarding the employee's alleged misconduct. In such a case, the municipal officers should consider retaining an outsider to act as a hearing officer and render a decision which they have committed themselves in advance to adopt. Hopefully, the employee in question will not object to such a procedure since it is in his or her interest to have an impartial

decision-maker. Even if the employee does object, but fails to present a better alternative, it is likely that a court would uphold such a process, if otherwise fair, though it is nowhere to be found in the state statutes.

The hearing should be tape-recorded so that, if there is an appeal, a transcript can be prepared. The hearing officer should issue a written decision so that a reviewing court can determine what his or her reasoning was and whether the evidence was sufficient to support the conclusions reached. If this is done, the Superior Court Judge will render a decision on the appeal based on the transcript and the written decision and will not take any additional evidence.

THE CONSTITUTION

Whether or not a municipal employee is entitled to a "for cause" hearing under state law, he or she may be entitled to a less formal hearing based on a right to due process under the federal Constitution. In the case of *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 539 (1985), the U.S. Supreme Court ruled that, in any case in which a public employee has a property inter-

est in their job, he or she is entitled to some kind of hearing before they can be fired, suspended, or otherwise disciplined in a manner which deprives him or her of substantial benefits from their employment. An employee would be considered to have a property interest in a job if a statute, ordinance, or contract protected a person from being dismissed or suspended without being given at least an informal for-cause hearing.

The due process hearing to which a public employee is entitled can be quite informal. It can consist of an explanation by the employer of the reasons for the proposed discipline and an opportunity for the employee involved to tell his or her side of the story. See *Loudermill*, *supra*. By satisfying its obligation to provide the employee with due process, the employer will also have avoided the possibility of firing an innocent person who could have demonstrated, if given the opportunity, that the charges were based on mistaken identity or that the proposed discipline would result in a substantial miscarriage of justice.³

In addition to their remedies under state law or the U.S. Constitution,



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public sector employees, if represented by a union, will ordinarily have the right to file a grievance complaining that there was no good cause for the discipline or that the discipline imposed was unfair or excessive. Virtually all union contracts include language barring discipline that is not based on good cause.

If a union employee files a grievance, he or she will usually be considered to have turned over the handling of the grievance to the union representatives. However, a municipal employee will not usually be precluded from pursuing a separate proceeding in state court to vindicate their rights regardless of the outcome of the proceedings under the contract. The cases are not entirely clear about when a union member will be allowed to file a complaint in state court which is also the subject of a separate grievance proceeding being pursued under the contract.⁴

In order to minimize the risk of having to fight the same case simultaneously in court and in arbitration with possibly inconsistent results, a municipal employer should try to reach an understanding with the grievant

and the union early in the proceedings that the matter will proceed to a final resolution exclusively in one forum or the other. An even better solution would be to include language in the union contract that will prohibit proceeding to arbitration in any case which has also been made the subject of a court complaint.

FIRST AMENDMENT

In the last few years, cases have arisen in which a public employee who has been disciplined has argued that the discipline imposed violated his or her free speech rights under the First Amendment. One context in which this occurs is when a public employee

is disciplined because of a public statement which is critical of his or her employer or supervisor. In these cases, the employee has often argued that the statement was protected free speech under the First Amendment.

The U.S. Supreme Court has greatly limited the effectiveness of this defense by holding that the First Amendment does not protect such statements if they were made by the employee as part of his official job duties rather than as a public citizen. *Garceetti v. Ceballos*, 547 U.S. 410, 421-422 (2006). The First Amendment defense will also fail if the employee’s comments are found not to involve matters of public concern. See, e.g. *Quintal v. City of Hallowell*, 2008 ME

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155, 956 A.2d 88. (Former Code Enforcement Officer's critical comments involved his personal disagreements with the City Manager rather than matters of public concern.)

A recent development concerns restrictions imposed by the National Labor Relations Board on the discipline of employees who have used social media to mock or criticize their employers or supervisors. The case most often cited is *American Medical Response* (2010) in which the Board issued a complaint against an employer for disciplining an employee who ridiculed her supervisor on her Facebook page. The Board ruled that firing the employee violated Section 7 of the National Labor Relations Act.

The right to engage in activities protected by Section 7 of the Act has been analogized to the right of employees to discuss labor-management issues "around the water cooler." Since 26 M.R.S.A. § 963 (the Municipal Public Employees Labor Relations Law) closely parallels section 7 of the N.L.R.A., and since the Maine courts have often looked to federal law in interpreting Maine's labor laws, it is not unlikely that discipline imposed on municipal employees in Maine based on their use of social media will be subject to review under the Maine act. It would therefore be unwise to subject a municipal employee to discipline with regard to his or her use of social media to complain of management practices unless the comments in question are extremely abusive or threatening.

In other words, municipal administrators would be well advised to develop thick skins and count to 10 (and perhaps call their attorneys) before giving in to the angry impulse to get rid of an employee who has been discovered to have made mocking or otherwise disrespectful comments on a Facebook site about his or her supervisor.

(This article was originally prepared for the municipal law clients of Linnell, Choate & Webber, LLP. It does not cover every legal issue that a municipality might encounter in going through employee discipline proceedings nor does it constitute legal advice.)

FOOTNOTES

i In the case of *Farley v. Town of Washburn*, 704 A.2d 347 (Me. 1997), the Law Court held that a highway

maintenance worker was not entitled to notice and hearing since his position was not created by charter or ordinance. This means that every discharge case involving a municipal employee has to start with a determination of whether the employee's position was created by local ordinance or charter. Many are not. However, employees who are appointed by a Town Manager are entitled to notice and hearing by virtue of 30-A M.R.S.A. § 2636(14). It is puzzling that the legislature has created this disparity (perhaps inadvertently) in the protections afforded to employees appointed by Selectmen and those appointed by a Town Manager. If the municipality is in doubt about what protections the employee is entitled to under state law, the safest course is to provide notice and a hearing.


ii In a surprising case decided this year by the U.S. District Court for Maine, the court ruled that a Town Manager could be the decision-maker

in a case in which he had recommended termination even though he also testified as a witness. See *Farris v. Poore*, decided Jan. 23, 2012.

iii It should be noted that a *Loudermill* type hearing, although sufficient for due process purposes, will not ordinarily satisfy an employer's duty under an ordinance, charter, or state law to provide a more formal hearing on the issue of whether there is good cause to fire or otherwise discipline the employee in question.

iv In the case of *Quintal v. City of Hallowell*, 2008 ME 155, 956 A.2d 88, the Law Court held that Quintal was barred by having filed a grievance from getting a "second bite of the apple" in state court since the case turned on procedural rather than substantive issues.

ON THE WEB

This article is also available online at: <http://lcwlaw.com/2012/04/discipline-of-public-employees/> 



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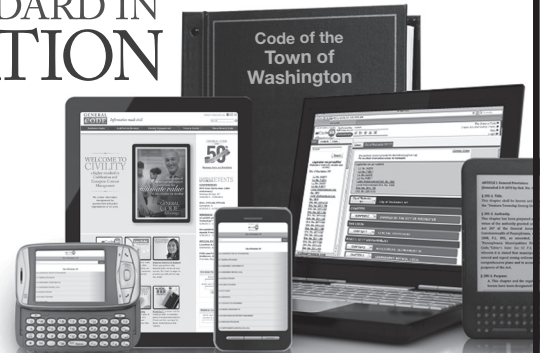
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Town Meetings Focus on Money, Budgets

By Liz Chapman Mockler

Careful planning and years of tight budgeting helped many of Maine's small communities stabilize or even reduce spending during March annual town meetings across the state.

There were, as always, exceptions, caused mostly by loss of federal and state funding, increased energy costs and one-time major expenses such as new fire trucks and large-scale road projects funded through local bonding.

In a trend that started when the national and state economies began tanking in 2008, more municipalities are dipping into their undesignated funds to offset continued loss of revenue in order to either keep the property tax rate basically unchanged or to lessen increases. Historically, town leaders have used savings for emergencies and one-time expenses to avoid the "ping pong" effect on the tax rate caused when "surplus" money is built into operational budgets.

When that happens, the following budget year becomes even more challenging unless a community can somehow replace the surplus money used the previous year.

In **Cornville**, for example, residents voted to use up to \$225,000 from surplus, or more than half of the amount available, to maintain the mill rate at about 16.

Also causing fiscal woes for municipalities this year is the loss of federal stimulus money, which has helped fund fire truck purchases, upgrades to airports and dispatch equipment and to retain police officers and teachers, among other spending items.

Municipalities were given more reason to worry about financial sup-

port from the state when Gov. Paul LePage successfully vetoed certain provisions of the supplemental state budget on April 14, shortly after the budget was given overwhelming support by the Legislature.

The vetoed lines in the budget were designed to make sure there would be adequate resources to reimburse the towns and cities for the state's share of the municipally administered General Assistance program. As it now stands, the state has a \$4.75 million hole in the GA reimbursement budget for the next fiscal year, beginning on July 1. In response to the Governor's veto, lawmakers at press time were expected to address the program again in the context of largely Medicaid-related supplemental state budget scheduled to be presented to the Legislature on May 15.

Meanwhile, voters in many towns considered non-budget warrant articles, including moratoriums and ordinances to regulate wind farms, gas pipelines, adult entertainment businesses and medical marijuana dispensaries.

In some towns, voters considered unique questions. In **Freedom**, residents approved a nonbinding resolution calling on Congress and the president to amend the U.S. Constitution to overturn the so-called Citizens United ruling by the Supreme Court, which concluded that corporations are "people" for campaign finance purposes. The ruling allows unlimited contributions to candidates from corporations and unions.

In **Cushing**, voters decided overwhelmingly to allow people to buy off-premise malt liquor and wines. And **Embden** residents agreed to convert the town's community center into an emergency shelter with memories of

last summer's tornado still fresh and frightening.

March remains the most traditional month for small-town annual budget meetings, followed by June. Most of the larger communities in Maine no longer pass budgets through floor debate and voting, opting instead to delegate final budget passage to town and city councils after a series of public hearing.

WATCHING THE PENNIES

In some communities, March town meeting voters accepted spending plans that required higher property taxes, but a slew of towns were able to either maintain the mill rate or keep budget increases to a minimum.

"Our budget is up a lot only because the fire department wanted a new fire truck," said **New Vineyard** Administrative Assistant Arlene Davis, explaining that voters approved borrowing up to \$200,000 for a tanker truck.

Thanks in large measure to mutual aid from the nearby Franklin County towns of **Strong** and **Farmington**, New Vineyard has operated with only a small tanker that does not carry enough water to douse most blazes. Davis said residents agreed to budget the full \$200,000, but she and selectmen expect the department to get a loan for the tanker after numerous unsuccessful attempts by fire officials to win grant money. Once that happens, voters will be asked to revisit the purchase and lower the budget to reflect the annual loan cost rather than the full \$200,000.

Davis said spending increased by only \$34,000 over last year, not including the money for a tanker.

"They will have to get a loan," she said, acknowledging the need for

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another truck. "If it wasn't for mutual aid, we could have a major fire. I think we've been lucky so far."

In **Minot**, a bedroom community to **Lewiston** and **Auburn**, voters passed a budget that reduces the amount to be raised in property taxes by nearly \$50,000 compared to last year. This is the second straight budget that reduces municipal spending.

Despite agreement that the town needs to build an addition on its fire station, voters were not ready to finance it. According to the Sun Journal newspaper, Moderator John Giesmar summed up the sentiments of local voters and those around Maine this way: "Sounds to me like your heart is in one place and your wallet is in another."

Mercer voters added \$4,500 to the municipal budget for a wood pellet stove for the community center, increasing the budget from last year by a total of \$18,000. **St. Albans** residents voted down spending \$105,000 for a new public works truck, 24-23. And although they approved borrowing up to \$60,000 to repair or replace a culvert near Indian Bridge, the municipal budget was still \$10,000 lower than last year.

In **West Paris**, voters approved a budget increase of just \$27,000 over last year. Town Manager John White thought the continued uncertainty over the state and national economies "has to be part" of the reason residents were reluctant to spend more. The amount to be raised by taxpayers increased \$46,000, White said, blaming reduced snowmobile excise tax revenue and state revenue sharing cuts for the fiscal problem.

The town has not funded reserve accounts in recent years, either. "With the way the economy is, it just isn't in the cards," he said.

Voters in **Chesterville** approved a municipal budget increase of \$16,000, according to Town Clerk Patricia Gordon. "Some people say we're not spending enough on roads," so selectmen will hold a special town meeting later this year to consider increasing the roads budget, she said.

Other towns that either maintained the current mil rate or increased spending only slightly included: **New Sharon**, **New Portland**, **Solon**, **Anson**, **Benton**, **Palermo**, **Newry** and **Palmyra**.

Some towns spent significantly more, including **Roxbury**, where voters approved borrowing \$1 million to fix roads; and **Carrabassett Valley**, which will pay half the \$1.7 million cost of installing a new irrigation system at the Sugarloaf Golf Course. Because the regional school district used \$450,000 from surplus to lower district town assessments, the tax rate in Carrabassett Valley will drop by 15 cents per \$1,000 in property value.

In **Troy**, residents who live on dirt roads successfully won support to increase the town's roads budget from \$15,000 to \$40,000 to pay for continued maintenance of the unpaved lanes. Despite the increase, the budget totaled \$16,000 over last year's spending plan.

OTHER BUSINESS

Voters in numerous towns settled non-fiscal issues ranging from moratoriums to new ordinances to property revaluations.

Thorndike residents defeated a citizens' petition calling for a forensic audit of the town books.

Canaan voters adopted ordinances to regulate wind energy projects and adult entertainment businesses. The action was pro-active; residents favored drafting and passing the ordinances rather than be forced to enact moratoriums and hustle to establish rules should someone want to develop a wind farm or open an adult business.

Harmony residents decided to skip a vote on whether to ban all-terrain vehicles from public roads after hearing that the Maine Municipal Association had advised selectmen that towns cannot make those decisions. A straw vote showed ATV access would have been maintained.

Farmington voters passed proposed ordinances to regulate wind farms and medical marijuana dispensaries.

Cambridge residents approved four moratoriums that will give town officials time to draft regulations for wind farms, pot dispensaries, adult entertainment and personal wireless service facilities. According to the Morning Sentinel newspaper, one voter was stumped by the wireless service moratorium since apparently no one can even get a wireless signal in the Somerset County town of 500 residents.

Searsport townspeople rejected a moratorium on propane tanks, therefore giving the green light to a developer who wants to build a propane storage facility 14 stories high. Voters in a straw poll nearly a decade ago voted against a natural gas terminal. The new project is expected to create 100 construction jobs and then up to 15 permanent jobs.

Hebron residents passed a mass-gathering ordinance meant to protect the general welfare of townspeople when more than 300 people gather in one place. Campgrounds are exempt, as well as town and school buildings. [\[mc\]](#)

The Maine Municipal Association (MMA) is a voluntary membership organization offering an array of professional services to municipalities and other local governmental entities in Maine.

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For more information visit the MMA website: www.memun.org



60 Community Dr., Augusta, ME 04330

Town Meetings: More Election Results

By Liz Chapman Mockler

This is a partial roundup of town meeting elections, based on published media reports in March and April. Uncontested races are not included unless the candidate was filling a seat vacated by a selectman who resigned or did not seek re-election.

Alfred: Veteran Selectman John Sylvester, a former Maine Municipal Association President, defeated one challenger to win another three-year term. The vote was 341-243. George Donovan was elected to serve the remainder of David Burns' term. Donovan held off two challengers to win with 241 votes, compared to 224 and 100 for his opponents. Burns resigned from the board earlier this year.

Belgrade: Daniel Newman and Bruce Plourde were re-elected with 235 and 271 votes, respectively. Challenger Peter Sargent garnered 179 votes.

Burnham: Selectman Stuart Huff defeated challenger Brent Chase to win re-election by a vote of 118-61.

Carrabassett Valley: Incumbent Selectman John Beaupre and newcomer Thomas Butler were elected after defeating challengers Christopher Parks and incumbent Stephen Pierce. Beaupre collected the most votes at 422, followed by Butler with 145, Parks with 119 and Pierce with 42.

Chelsea: Six people were elected to form the town's first charter commission, following numerous local government problems that have concerned residents for more than two years. A charter will provide a road map of sorts on how to run the town and how to handle problems and issues when they arise. Those elected were: Elizabeth Cousins, Richard

Danford, Maria Jacques, Scott Ludwig, Barbara Skehan and Charles Skehan.

Cushing: Daniel Staples won re-election by easily defeating a challenger by a vote of 267-88.

Pittston: Timothy Marks defeated incumbent Selectman Isaiah Peppard by a vote of 99-82. A third candidate received 45 votes.

Somerville: Susan Greer ran alone to fill the seat vacated by David Stanley, former first selectman. Incumbent Selectman Martha Staples won reelection by defeating a challenger by a vote of 73-48.

Thorndike: Incumbent Selectman Jim Bennett defeated Jeff Fowler by a vote of 88-72 to win his 12th term. Voters also elected Larry Ward over Fowler by a vote of 82-71 for the second selectman's seat, while Lisa Cuvra defeated Carol Coffin for the third selectman's seat by a vote of 71-69.

Turner: Incumbent Selectman Dennis Richardson lost his bid for re-election by three votes. He was defeated by Richard Keene by a vote of 72-69.

Unity: Two selectmen left the March 24 town meeting after voters rejected a request to build a new town office – an issue the board has worked on for six months. Selectman Jim Kenney, who served off and on for 10 years, told the Morning Sentinel he would resign immediately; Selectman Ron Rudolph, a 12-year veteran on the board, left the meeting during a break. Rudolph said he would serve three more months to ensure a smooth transition for whoever is elected to fill the two seats. Both men had a year left on their terms. On March 25, voters elected Clement Blakney over Stephen Wright by a

vote of 44-17 for a three-year term as selectman.

Winthrop: Larry Fitzgerald held off challenges by two other candidates to fill the unexpired term of James Lattin, who resigned in February. Fitzgerald, who will serve until year's end, garnered 115 votes to defeat former Councilor Judi Stebbins and Gilbert Turcotte, who collected 76 and 27 votes, respectively. [mc](#)

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Liz Mockler Chapman is a freelance writer from Augusta, lizmockler@hotmail.com.



Van Buren EMT and Paramedic **Peter Carbonneau** died April 8 while on duty at the ambulance station. Carbonneau, 51, served the town as a volunteer firefighter for 24 years. He also served as assistant director and later director of the community's privately owned ambulance service.

Gregory Given was named Livermore Falls' sewer department superintendent. He will replace **Kent Mitchell**, who plans to retire in May. Given, a Jay resident, was among 13 applicants for the job. He worked previously as a wastewater operator for the City of Augusta's regional water and sewer district.



Mark Green

Sanford Town Manager **Mark Green** accepted the job of executive director of the Washington-Hancock Community Agency. Green said he wanted a new challenge after serving as Sanford manager for eight years. Green was the 2009 recipient of the Linc Stackpole Manager of the Year Award, presented by the Maine Town & City Management Association for outstanding leadership and is a former president of Maine Municipal Association's Executive Committee. **James Nimon**, director of the Sanford Regional Economic Growth Council, will work as interim manager after Green leaves this month.

Bangor police Sgt. **Allen Hayden** retired after serving on the force for almost three decades, beginning in 1987, after working for the Town of Skowhegan for three years. Hayden, called a "gentle giant" by his peers, was recognized as a pivotal influence in creating the Bangor department's Special Response Team in 1990.

Winthrop Town Councilor **Priscilla Jenkins** will run for the Maine Senate District 21 seat, representing the small towns that ring the City of Augusta. Jenkins, who is serving her second term on the council, will be challenged by former state Rep. **David Bustin**, a former councilor and mayor in Hallowell.

John Lee has been rehired as Medway fire chief. Lee retired last November after 30 years of service. After a consultant told selectmen that none of the candidates who applied for the job were qualified to replace Lee, the board met with Lee to ask him to return. Lee will receive a stipend of \$4,000 to oversee the volunteer department.

Waterville officials named **Randy Marshall Jr.** as full-time manager of the municipal airport in hopes of upgrading the facility. Marshall was hired last spring as assistant airport manager. An airport advisory board also will be created.

Longtime former Bucksport Town Manager **Roger Raymond** has been named interim Milo manager following the resignation of **Jeffrey Gahagan**.



Lt. Thomas Reagan

Bangor police Lt. **Thomas Reagan** has become the first Maine law enforcement officer to win the coveted Enrique "Kiki" Camarena Award, presented annually by the national Elks association to one officer in the U.S. The award

recognizes police officers who make a significant effort to prevent drug abuse and trafficking. Reagan became an expert on the synthetic drug known as "bath salts" and traveled across Maine to educate other officers, emergency responders, and medical personnel, among others, about the cocaine-like drug and how to handle people who are high on bath salts. Reagan is a 25-year veteran of the Bangor depart-

ment who began his career with the U.S. Coast Guard before moving to the Orono Police Department for a year and then joining the Bangor force in 1988. The Camarena award is named for a former U.S. drug agent who was kidnapped and tortured before being killed by a Mexican drug cartel in 1985.

Fairfield Town Clerk **Tracey Stevens** resigned to take the job as Freeport town clerk after serving Fairfield residents since August 2004. She replaces **Beverly Curry**, who retired in early May. Stevens said organizing and overseeing elections is her favorite part of her clerk work. A Thomas College graduate, she is studying to become a certified town clerk and plans to seek master clerk status once certified. **Christine Keller** will replace Stevens in Fairfield.

Christopher Stevenson, Wayne road commissioner for 21 years, died April 2 at the age of 59. Stevenson, a self-employed businessman, was the youngest-ever road commissioner elected in Maine. He was first elected in 1973 and retired as road commissioner in 1994.

Ogunquit Selectman Chairman **Donato Tramuto** announced recently that he will not seek re-election in June, even as a write-in candidate. Tramuto has served on the board for nearly six years and cited his busy work schedule and volunteer service on a number of other boards as reasons for not seeking another term. Tramuto was praised for his leadership and management skills in helping the town overcome past troubles and make progress on numerous projects. **[me]**



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Statewide: Maine Municipal Association has developed and adopted Communication & Social Media Policy and Guidelines that member municipalities may want to consider modifying and adopting entirely or in part. Like many municipalities, MMA uses social media tools Facebook and Twitter to communicate with members, the media and public. The document can be found at the MMA website, www.memun.org.

Augusta: The state bought 5,700 acres of land near Millinocket that will protect two miles of shoreland on Sebobeis Lake. The deal took several years to complete and cost \$2.7 million. The lake is located about halfway between Millinocket and Milo with views of Mt. Katahdin. The deal means the state now owns nearly all 19 miles of shoreland around the lake, a conservation effort that spanned a decade and is considered to be critical to protecting the lake and shoreland for public use.

Augusta: The city's Memorial Bridge is scheduled to get a \$7 million paint job beginning in mid-May and continuing through the fall. The bridge was built for \$1.2 million in 1949. Most of the new paint job will be done almost entirely under the deck of the bridge; officials do not expect traffic to be affected.

Canton: A forester advised town officials that municipal coffers could gain up to \$50,000 by selectively harvesting a 179-acre town-owned woodlot.

Eastport: The Maine Public Utilities Commission in April authorized three utilities to negotiate long-term contracts for the electricity that will be produced by underwater turbines off Eastport and Lubec in Washington County. The project is expected to boost the economy of Maine's poorest county region. The turbines are estimated to produce enough energy to power 1,000 homes and employ 200 workers during construction. Twenty full-time jobs will be created once the project is complete. Officials said the PUC decision will lead to the first long-term tidal power purchase in the U.S.

Farmington: Selectmen accepted a \$75,000 donation from resident Rich-

ard Bjorn to build a garage on the new police station. Voters were asked to fund the project, but decided instead to start a reserve with an initial appropriation of \$25,000.

Gilead: A \$10,000 grant from two foundations will finance improvements to the Gilead Railroad Depot, believed to be the oldest of its kind in Maine and one of only a few remaining in the U.S. The money will pay for the chimney to be rebuilt, to add a platform to the front of the small red depot and for indoor painting.

Hampden: The U.S. Postal Service distribution center here may get a reprieve from its planned closing, which would have meant the transfer of 170 people from Greater Bangor to the Scarborough distribution center. Sen. Susan Collins asked for a moratorium on all 183 proposed plant closings across the country. The Senate in late March approved Collins' bill that calls for a moratorium, but the postmaster general has not responded to the request.

Lyman: The town's new charter commission decided to keep annual town meetings as a way to approve the municipal government, but still must make recommendations on whether to hire a manager or an administrative assistant to the selectmen, among other issues. The commission was approved

during a special town meeting last November.

Millinocket: The new owner of two shuttered paper mills plans to convert the area to an industrial park and search nationwide for industries to move to Maine. The mills were closed last September, delivering a severe financial blow to the region and its workforce. The new owner is Cate Street Capital based in Portsmouth, N.H.

Portland: The city's Community Health Center received a \$500,000 grant under the Affordable Care Act. The money will fund renovations to the clinic, which serves 3,000 patients a year.

Westbrook: Councilors are considering creating a tax relief fund that would eliminate a property tax increase for the coming fiscal year. Under the proposal, the city would initially deposit \$900,000 into the fund, which could also help offset school budget increases.

Yarmouth: The town's water district plans to increase its rates by 14 percent to help fund a new \$2.5M headquarters building. Rates increased by 11 percent last year in the first increase since 2005. Even with the increases, residents of North Yarmouth and Yarmouth pay among the lowest rates of the nearly 160 districts in Maine. www.memun.org

NEW ON THE WEB

Here are some highlights of what's been added at www.memun.org since the last edition of the *Maine Townsman*.

- **Social Media Guidelines.** Maine Municipal Association posted its recently approved "Communication and Social Media Policy and Guidelines." The document may be a valuable resource for municipalities that have not adopted guidelines on this topic and may be using Facebook, Twitter and other social-media communication tools.
- **Active Communities.** The Maine Center for Disease Control and Prevention and Healthy Maine Partnerships will hold their annual Active Community Conference on May 31 in Portland. Highlighted topics include establishing rail-trail networks, encouraging bicycling and walking and engaging young people. Registration information has been posted.
- **Mosquito-Borne Illness Plan.** A plan that guides communities on how to keep up surveillance of arboviral illnesses, prevent them and respond to situations when necessary has been posted. The plan primarily focuses on Eastern Equine Encephalitis (EEE) and West Nile virus.



Municipal Bulletin Board

WHEN JAIL INMATES RETURN: COMMUNITY RE-ENTRY

What happens when jail and prison inmates serve their terms and re-enter a community? How can municipalities best prepare for these eventualities? That is what two leading experts will discuss on May 22 at the MMA Conference Center in this workshop's debut.

The presenters, Jesse Jannetta from the Urban Institute and Jane Kleklamp from La Crosse County, Wisconsin, will educate a diverse audience of municipal officials and employees. It will be relevant to both large and small municipalities.

The workshop begins with registration at 8:30 a.m. and ends at 3 p.m. Cost to attend is \$45 for MMA members and \$90 for non-members.

TITLE 21-A ELECTIONS

The Maine Town & City Clerks' Association will offer a workshop on Title 21-A Elections on May 23 at the Seasons Event & Conference Center in Portland. It will be presented by Kim McLaughlin, Town Clerk in Old Orchard Beach, and Julie Flynn, Maine's Deputy Secretary of State.

The session addresses all aspects of administering state and federal elections, including: the process for opening the voting place; using the Central Voter Registration System; preparing for Election Day; and, posting notice. It begins with registration at 8:30 a.m. and concludes at 4 p.m. Cost is \$50 for MTCCA members and \$60 for non-members.

VOTER REGISTRATION

The MTCCA will hold a one-day voter registration workshop on May 24, also at the Seasons Event & Conference Center in Portland. Tracey Stevens, Town Clerk in Freeport, and Ms. Flynn will co-present at this day-long event.

The workshop will review the responsibilities of the municipal Registrar of Voters and their tasks before, during and after Election Day. Registration begins at 8:30 a.m. and the class will conclude at 4 p.m. Cost is \$50 for MTCCA members and \$60 for non-members.

PLANNING BOARD/BOA: MACHIAS

The University of Maine at Machias will be the site of a Local Planning Boards & Boards of Appeal workshop to be presented by an attorney from MMA's Legal Services Department on June 5. The workshop is designed as a basic introduction to the legal rules governing decisions made by local planning boards and boards of appeal. While it is aimed at new board members, veterans may find attending the workshop to be a valuable refresher.

The presenter will explain jurisdiction issues, conflicts of interest, public notice requirements, site visits, the use of e-mail and other topics. The workshop begins with registration at 4 p.m. and ends at 8:30 p.m. A light meal is included. Cost for the event is \$40 for MMA members and \$80 for non-members.

HIGHWAY CONGRESS

One of the best municipal events of the year is the Annual Highway Congress put on by the Maine Chapter of the American Public Works Association. This year's Congress will be held on June 7, starting at 7 a.m. at the Skowhegan Fairgrounds, its usual site.

The event, held rain or shine, features snow plow and skid-steer roadeos and demonstrations on paving, equipment tryouts, seat belt convickers, welding, cutting and the use of heavy equipment. More than 100 vendors will be on hand. Prizes will be awarded. There is no cost, although the chicken barbecue lunch will cost \$7 for people who register after May 24.

EOW: DOVER-FOXCROFT, BAR HARBOR

MMA officials will hold Elected Officials Workshops on June 13 at the American Legion Post 29 in Dover-Foxcroft and on June 28 at the Atlantic Oceanside in Bar Harbor. The workshops will run from 4:30 to 8:30 p.m. and include a light meal. Registration begins at 4 p.m.

The workshops are "musts" for both newly elected and veteran officials as they provide an update to legal requirements regarding: your rights as officials; open meeting requirements; conflicts of interest; liability issues; and, the Maine Freedom of Access law. Officials who attend the session meet the state's Right to Know training requirements and will receive certificates. A section on media relations and communications was added in 2010.

The cost is \$40 for MMA members and \$80 for non-members. Registration is available through the MMA website at www.memun.org.

ROLES OF ELECTED OFFICIALS & MUNICIPAL MANAGERS

This popular program is designed to help elected officials and city and town managers focus on their differing roles, responsibilities and legal requirements. It will be presented by: David Barrett, Director of Personnel Services & Labor Relations at MMA; Don Gerrish, consultant with Eaton Peabody and a long-time municipal manager; and, Pam Plumb, a former councilwoman and mayor for the City of Portland and co-founder of Great Meetings! Inc.

The evening workshop will be held on June 21 at Kennebunk Town Hall, beginning with registration at 4 p.m. It is scheduled to end at 8:30 p.m. A light meal will be provided. The cost is \$60 for MMA members and patrons and \$120 for non-members. www.memun.org

All of the upcoming workshops can be found on the MMA website.

Use the following link:

[http://www.memun.org/
public/MMA/svc/training.
htm](http://www.memun.org/public/MMA/svc/training.htm)

CONFIDENTIALITY & PROPERTY TAX INFO

Question: A taxpayer has asked our assessor to sign a confidentiality agreement before responding to the assessor's request for more information. Should the assessor sign this?

Answer: We strongly advise against it because whether any property tax records in the municipality's possession are confidential depends *exclusively* on whether they are designated confidential by law (see 1 M.R.S.A. § 402(3)(A)). No "confidentiality agreement" can convert public records into confidential records – any such agreement by a municipal official would be legally unenforceable (see *Guy Gannett Publishing Co. v. University of Maine*, 555 A.2d 470 (Me. 1989)) because it would be *ultra vires* (beyond the official's powers).

In fact, very few property tax-related records are confidential under law. Tree Growth forest management and harvest plans are confidential (see 36 M.R.S.A. § 579). So are poverty abatement records (see 36 M.R.S.A. § 841(2)). But otherwise, all assessment records should be presumed to be public records that, if requested, cannot be withheld without violating Maine's Freedom of Access Act ("Right to Know" law).

If a taxpayer believes that information given to an assessor is a protected "trade secret" (see 10 M.R.S.A. § 1542(4)), the taxpayer may sue for a court order protecting the information from public disclosure, as indeed happened in *Champion International Corp. v. Maine State Board of Property Tax Review*, KENSP-CV-94-397 (Me. Super. Ct., Ken. Cty., Nov. 17, 1994). To enable the taxpayer to take timely action to protect a trade secret, the assessor could agree to make a good faith effort to notify the taxpayer of a public record request before responding to it, but this agreement should be informal and without penalty to the assessor or the municipality.

Incidentally, if a taxpayer refuses to answer the assessor's request for more information, whatever the taxpayer's reason, the taxpayer is barred

from any appeal of an abatement decision (see 36 M.R.S.A. § 706).

For more on public records, see our "Information Packet" on Right to Know, available free to members at www.memun.org. (By R.P.F.)

STORMWATER FEE UPHELD

The Maine Supreme Court has held that a municipal stormwater assessment is a fee, not a tax. The distinction is critical because, while municipalities may assess fees for a wide variety of services, the power to tax rests exclusively with the Legislature, and municipalities cannot assess or collect a tax unless expressly authorized by statute (currently there is no statutory authority for a stormwater tax).

In *City of Lewiston v. Gladu*, 2012 ME 42, the City sued the owner of a small shopping mall for unpaid stormwater assessments. The assessments were levied pursuant to an ordinance that created a stormwater management utility to mitigate the impacts of uncontrolled stormwater runoff. Assessments are based on the amount of impervious surface area on each property; the funds collected are used solely for stormwater-related expenses. Three different credits are available to property owners who wish to reduce their assessment, including a 100% credit for property with its own stormwater collection and discharge system if it does not impact the City's system.

The property owner argued the stormwater assessment was an unauthorized tax, not a fee. But applying a four-part test used in many jurisdictions including Maine, the Law Court readily concluded otherwise. First, the purpose of the assessment was

not primarily to raise revenue but to fund the costs of regulating stormwater. Second, there was a direct relationship between the assessment and the benefit conferred (stormwater control). Third, the assessment was voluntary in that it could be avoided altogether by constructing one's own system. And fourth, the amount of the assessment was a fair approximation of the City's costs and the property owner's benefit. Thus, the Court reasoned, the stormwater assessment was a permissible fee, not an unauthorized tax.

The *Gladu* case is significant because, besides stormwater assessments, municipalities commonly assess fees for other services as well, such as sewage and solid waste collection and disposal and emergency rescue services. The ability to fund these services by assessing those who directly benefit (instead of the taxpayers at large) is an important prerogative to preserve.

For more on municipal fees, see our "Information Packet" on Fees, User Fees, Impact Fees, Service Charges and PILOTS, available free to members at www.memun.org. (By R.P.F.)

ACCESS TO GREAT PONDS

Question: We've been told there's a State law giving the public the right to cross private property in order to access a great pond. Is this true?

Answer: Yes, it is. Although municipalities have no role in enforcing it, the "Great Ponds Act" (17 M.R.S.A. § 3860) prohibits any person from being denied access or egress over another person's land to get to or from a great pond. A "great pond" is any inland body of water which in its natural state has a surface area in excess of 10 acres and any inland body of

The logo features a stylized blue 'M' with a house-like shape on top, followed by the words 'Municipal Calendar' in a blue serif font.

ON OR BEFORE JUNE 15 — Monthly/Quarterly expenditure statement and claim for General Assistance reimbursement to be sent to Department of Human Services, General As-

sistance Unit, DHS #11, Augusta, ME 04333 (22 MRSA §4311).

JUNE 30 — Pinball machine licenses expire on this date (8 MRSA §443).

water artificially formed or increased which has a surface area in excess of 30 acres. Great ponds are held in trust by the State of Maine for the use of the general public.

The Great Ponds Act codifies both common and enacted law dating from colonial times (see the Massachusetts Bay Colonial Ordinance of 1641-1647 as cited in *Conant v. Jordan*, 107 Me. 227 (1910)). There are several important limitations to this law, however.

First, a person must be “on foot” – the law does not allow vehicular access. But a person may, presumably, hand-carry equipment such as a canoe or kayak, fishing gear, etc.

Second, access is permitted only over “unimproved land.” Historically, improved land meant crop land or hay field, so access is not permitted over land that is cultivated or managed for agricultural purposes or, presumably, land that is maintained as a lawn or yard.

And third, the law does not apply to the land of a water company or district if the great pond is used as a public water supply.

The Attorney General, upon complaint by any person denied access, may prosecute for either criminal or civil penalties. Any person denied or likely to be denied access may also sue for a declaratory judgment and an injunction as well as actual and punitive damages.

Note, though, that the law imposes no duty on landowners to inform anyone of their right of access or to give directions or to provide or maintain a suitable access way.

Landowners concerned about their potential liability under the law can relax – Maine has another law that renders landowners virtually immune from liability to others who use their land for recreational purposes (see “Landowner Liability Law,” *Maine Townsman*, “Legal Notes,” February 2009). (By R.P.F.)

ADOPTING A BOARD OF ASSESSMENT REVIEW

Question: What are the advantages of having a local board of assessment review (BAR), and how do we go about

creating one?

Answer: The principal advantage is that all appeals from the assessors’ or the municipal officers’ refusal to grant a property tax abatement must be taken to the BAR instead of the county commissioners (see 36 M.R.S.A. § 843(1)). Appeals from the BAR then go to Superior Court, except for nonresidential properties having an equalized valuation of \$1 million or more, which go to the State Board of Property Tax Review instead. In any case, with a local BAR the county commissioners are not involved at all – at any stage – in property tax abatement appeals. This substantially improves the odds of a more knowledgeable and less political review.


Any town may create a BAR by vote of its legislative body at a meeting held at least 90 days before the annual meeting (see 30-A M.R.S.A. § 2526(6)). The BAR is appointed by

the municipal officers and may range in size from three members and two alternates to five or seven members and up to three alternates. Or in lieu of a separate board, the board of appeals may be designated to serve as the BAR.

Any city may create a BAR by vote of its city council in accordance with 30-A M.R.S.A. § 2552.

The procedures for a BAR are the same as for a board of appeals (see 30-A M.R.S.A. § 2691(3)).

For a summary of BAR procedures and a sample BAR ordinance and rules of procedure, see MMA’s *Municipal Assessment Manual*, available free to members at www.memun.org.

For a close-up look at BARs in actual practice, see the feature article “Exploring Options for Assessment Review” in the February 2008 *Maine Townsman*, available at www.memun.org. (By R.P.F.) 



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